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IN THE UNITED STATES DISTRICT COURT

DISTRICT OF GUAM

LOURDES P. AGUON-SCHULTE.

CIVIL CASE NO. 04-00045

Plaintiff.

(Superior Court of Guam
Civil Case No. CV1103-04)

THE GUAM ELECTION COMMISSION, et. al.

Defendants.

JAY MERRILL, et. al.,

CIVIL CASE NO. 04-00046

Plaintiffs.

(Superior Court of Guam
Civil Case No. CV1111-04)

THE GUAM ELECTION COMMISSION, et. al.

Defendants.

**THE GOVERNOR OF GUAM'S
SUPPLEMENT TO HIS OPPOSITION
TO PLAINTIFFS' MOTION FOR
SUMMARY JUDGMENT**

ORIGINAL

1 The Governor of Guam, Felix P. Camacho (the “Governor”), respectfully submits
2 this supplement to his opposition to plaintiffs’ motion for summary judgment. At the time the
3 Governor was required to submit his opposition to the motion for summary judgment, the
4 deposition transcript of Gerald Taitano, Executive Director of the Guam Election Commission,
5 had yet to be prepared. The transcript is now complete, and a copy of it is attached as Exhibit “4”
6 to the Declaration of Daniel M. Benjamin (“Benjamin Decl.”) submitted concurrently herewith.
7
8 The Governor now wishes to alert the Court to the certain relevant testimony by Mr. Taitano.

9 First, Mr. Taitano testified that the ballot pamphlet for Proposal A was prepared
10 consistent with the prior practice of the Commission as to all previous initiatives:

11 If you read the law, there has never been – well, first of all,
12 it is my reading of the statute that what needs to be presented to the
13 voters is a copy of the measure. Now, the measure, if you go into
14 the law and read what a measure is – and you gotta differentiate
that from an initiative measure. The measure on its own says, what
is the question.

15 *So if I presented the voters a copy of what the question is
16 going to be on the ballot, that, to me, is sufficient notification
17 under the law.* That is the way that this initiative was presented.
18 That was the way that the initiative on the minimum drinking age
was presented, and *that is the way all other initiatives in GEC’s
history has always been presented.*

19 It is ludicrous to send out an 80-page document to every
20 voter on this island because of the cost associated with it. What
21 the Election Commission staff and our practice is, take a look at
22 the measure. What is the measure? The measure is the question.
23 And in the information pamphlet that we sent out, it had, this is the
way it’s going to show; initiative measure, an explanation, the 100-
word document developed by counsel, and then the question. And
then in the Chamorro and in the English, the two official languages
of this island.

25 (Benjamin Decl. Exh. “4” at 21:1-23 (emphasis added)); *accord Id.* at 39:11-14.) Therefore,
26 proponents of Proposal A cannot credibly claim they received different treatment due to the bias
27 they claim existed against their initiative (especially as they have introduced no evidence of bias
28

despite carrying the burden of proof and burden of production on this summary judgment motion).

Second, Mr. Taitano testified that copies of Proposal A were available to the public on the Commission's website and at its office. (*Id.* at 23:7-11.) He further testified that the Commission delivered copies to the Guam Public Library, to the Robert F. Kennedy Library at the University of Guam, and to the Office of the Public Auditor. (*Id.* at 45:10-20.) He also testified that the Commission delivered copies of Proposal A to all village mayors through the Mayor's Office for purposes of having it posted, which delivery method was the standard procedure for the Commission. (*Id.* at 34:19-25.) This further supports the compliance and substantial compliance arguments raised by the Commission and the Governor in opposition to the summary judgment motion.

Dated this 20th day of December, 2004.

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By:

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